

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6015

BILL NUMBER: SB 9

NOTE PREPARED: Feb 3, 2011

BILL AMENDED: Feb 3, 2011

SUBJECT: Consumer Protection Matters.

FIRST AUTHOR: Sen. Zakas

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) *Definition of Health Care Provider:* For purposes of the statute authorizing the Attorney General to take certain actions with respect to abandoned health records and other records containing personal information, the bill provides that a "health care provider" includes a person licensed, certified, registered, or regulated by a board listed in the statute governing health professions standards of practice.

Telephone Solicitation of Consumers: It specifies that the statute governing the quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone applies to a residential telephone subscriber who, for the service received: (1) has a place of primary use in Indiana; or (2) is issued an Indiana telephone number or an Indiana identification number; in order to include within the protections afforded by the statute subscribers of interconnected VOIP service, subscribers of mobile telecommunications services, and users of a prepaid wireless calling service.

It also requires the Attorney General's Consumer Protection Division to notify Indiana residents of the right of any of those subscribers or users to place a telephone number on the listing, and it provides that for purposes of the same statute, a "telephone sales call" includes, in addition to calls made through automated dialing or recorded message devices, transmission of the following: (1) Text or graphic messages using short message service (SMS). (2) Images, photographs, or multimedia messages through multimedia messaging service (MMS).

Deceptive Consumer Sales: The bill amends the statute concerning deceptive consumer sales to: (1) provide that a violation of the federal Fair Debt Collection Practices Act (FDCPA) is a deceptive act that is actionable by the Attorney General under the statute (but that is not subject to an action by an individual or to a class

action); and (2) include cross references to certain consumer protection statutes, the violation of which constitutes a deceptive act subject to the penalties and remedies set forth in the statute. The bill limits the civil penalty that the Attorney General may recover for a violation of the FDCPA to \$1,000 per consumer.

Home Loan Practices: The bill specifies that for purposes of the statute governing home loan practices, a "deceptive act" includes a knowing or intentional misrepresentation made regarding real estate transactions, as well as mortgage transactions.

Department of Insurance: The bill provides that the statute requiring the Department of Insurance (Department) to establish and maintain an electronic system for the collection and storage of certain information about persons participating in or assisting with certain residential mortgage transactions also applies in the case of residential real estate transactions that: (1) do not involve a mortgage transaction; and (2) are closed by a closing agent after December 31, 2011. It requires certain additional information about residential mortgage transactions and residential real estate transactions to be collected and stored in the system.

Effective Date: Upon passage; July 1, 2011.

Explanation of State Expenditures: *Attorney General (AG)* : The bill potentially increases costs for the AG with the following provisions.

Definition of Health Care Provider: The definition of a health care provider is expanded under the bill extending the abandoned health care records provisions to apply to a person licensed, certified, registered, or regulated by any of the health care professional boards. [The law requires the AG to determine the records are abandoned, notify patients and others named in the files, and maintain the records for the time specified in statute or 3 years. Costs under this section are paid from the Health Records and Personal Identifying Information Protection Trust Fund enacted in law in 2010.]

Telephone Solicitation of Consumers: The definitions used in the Telephone Solicitation of Consumers Law are amended to indicate that phones using VOIP and mobile telecommunications services are covered and that telephone sales calls include text and graphic message using short message service and images, photographs, and multimedia messages using multimedia messaging service. These changes may increase the number of enforcements made. Also, the AG must include subscribers of interconnected VOIP and mobile telecommunications services in notifications of Indiana residents. [The Telephone Solicitation Fund is composed of fees charged to telephone solicitors for a copy of the telephone privacy list and fines for violations of the Telephone Solicitation of Consumers Law, and the Fund pays for administration of the provisions of the statute and for deceptive acts concerning federal telephone equipment laws. In FY 2010, the Fund received revenue of \$607,500 and had expenses of \$523,900.]

(Revised) *Deceptive Consumer Sales and Home Loan Practices:* The AG may have additional causes of action arising from violation of federal debt collection laws and out of the clarification that a deceptive act refers to a real estate transaction as well as a mortgage transaction. If the AG is successful in prosecuting the action, the AG may be awarded attorney fees and a civil penalty not to exceed \$1,000 per consumer.

(Revised) *Department of Insurance (DOI):* Modifications to the system required under the bill have already been completed and will result in no additional fiscal impact. [The RREAL IN database has been up and running a little over a year and became accessible on January 1, 2010.]

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: AG, DOI.

Local Agencies Affected:

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